

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 24 2025

MITCHELL R. ELFERS
CLERK

Ismara Labarrere-Abreu
Name
(BENEFICIARY)

Address

13404 Panorama loop NE

Albuquerque, NM 87123 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Ismara Labarrere-Abreu, Plaintiff
(Full Name)

CASE NO. TBD CV 25-299 SCY
(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. §1983

• CARVANA CO. DBA CARVANA LLC,
Ernest C. Garcia III (CEO/TRUSTEE) Defendant(s)
• 300E Rio Sardo Parkway, TEMPE, AZ, 85281
USA

A. JURISDICTION

1) Ismara Labarrere-Abreu
(BENEFICIARY), is a citizen of NEW MEXICO
(Plaintiff) (State)
who presently resides at 13404 Panorama loop NE
(Mailing address or place of confinement)
Albuquerque, NM 87123

2) Defendant Ernest C. Garcia III (CEO/TRUSTEE) is a citizen of
(Name of first defendant)
TEMPE, ARIZONA, and is employed as
(City, State)
CEO OF CARVANA CO. DBA CARVANA LLC. At the time the claim(s)
(Position and title, if any)
alleged in this complaint arose, was this defendant acting under color of state law?
Yes ☐ No ☒ If your answer is "Yes", briefly explain:

3) Defendant N/A is a citizen of _____
(Name of second defendant)

_____, and is employed as _____
(City, State)

_____. At the time the claim(s)
(Position and title, if any)

alleged in this complaint arose, was this defendant acting under color of state.

Yes ☐ No ☐ If your answer is "Yes", briefly explain:

N/A

(Use the back of this page to furnish the above information for additional defendants.)

4) Jurisdiction is invoked pursuant to 28 U.S.C. §1343(3), 42U.S.C. §1983. (If you wish to assert Jurisdiction under different or additional statutes, you may list them below.) I Assert and invoke full equitable Jurisdiction,

Also, federal question Jurisdiction, This case arises under federal financial regulations, Banking Laws, and but not limited to commercial codes governing negotiable instruments including 12 C.F.R. § 201.108, which requires the processing of promissory notes and bills of exchange as lawful tender.

B. NATURE OF THE CASE

1) Briefly state the background of your case.

Please see Attachment/back of page.

BRIEF STATEMENT OF THE BACKGROUND OF THE CASE

This case arises from **fraudulent financial misrepresentations, unjust enrichment, failure to process lawful negotiable instruments, and wrongful encumbrance of property by Carvana CO. DBA Carvana LLC and its CEO Ernest C. Garcia III(TRUSTEE)**, (hereinafter “Respondents”). Petitioner **Ismara Labarrere-Abreu(BENEFICIARY)** (hereinafter “Petitioner”) lawfully tendered a **Bill of Exchange (a negotiable instrument) in good faith** to settle an alleged auto financing obligation, in accordance with **12 C.F.R. § 201.108, UCC § 3-310, and GAAP accounting principles**.

Despite having **accepted the instrument under the Mailbox Rule**—by failure to return or formally reject it—Respondents **refused to honor the payment, failed to issue the required IRS Form 1099-C to document discharge of the obligation, and continued to report the account as delinquent, resulting in irreparable harm to Petitioner**.

Additionally, **Respondents fraudulently imposed a lien on Petitioner’s automobile without valid authorization** and are now **attempting repossession, which constitutes conversion and unjust enrichment**. Petitioner further asserts that **Carvana has improperly retained surplus cash collateral**, including but not limited to **pre-funded reserve accounts, excess spread revenues, and surplus payments derived from Petitioner’s financial instruments**.

Despite **multiple attempts to resolve this matter**, Respondents have **failed to act in good faith**, violating **federal banking laws, financial disclosure regulations, and tax reporting requirements**. Furthermore, their legal representatives, acting in bad faith, have advised them to continue these deceptive practices in violation of **12 C.F.R. § 37.3(b) (misrepresentation of banking transactions) and 26 C.F.R. § 1.6050P-1 (failure to discharge a debt)**.

Petitioner now seeks relief in **Equity Jurisdiction** through the **United States District Court for the District of New Mexico**, requesting a **Temporary Restraining Order (TRO) to halt repossession, Declaratory Judgment to recognize the instrument as lawful payment, and a Constructive Trust over all but not limited to surplus funds and revenues derived from the fraudulent securitization of the auto loan**.

This case highlights a **systemic issue within the modern financial system**, where financial institutions **unjustly deny lawful negotiable instruments, misrepresent financial transactions, and profit from concealment of material facts**. The outcome of this case will set an important precedent for **consumer rights, financial transparency, and equitable enforcement of negotiable instruments**.

C. CAUSE OF ACTION

- 1) I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary, you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.

A)(1) Count I:

See Attachment(s) on Back on
pg please, (Count I, Count II, And Count III.)

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

B)(1) Count II:

(2) Supporting Facts:

C. CAUSE OF ACTION

A)(1) Count I: Fraudulent Misrepresentation & Breach of Fiduciary Duty

(2) Supporting Facts:

Petitioner **Ismara Labarrere-Abreu** lawfully tendered a **negotiable instrument (Bill of Exchange)** to Respondent **Carvana CO. DBA Carvana LLC** and CEO **Ernest C. Garcia III** and but not limited to **affiliates, agents, directors, officers** to satisfy an alleged auto financing obligation. The instrument was sent in good faith, **accepted under the Mailbox Rule**, and not returned, meaning **acceptance was established upon delivery**. Despite this, Respondents:

1. **Fraudulently misrepresented the financial transaction** by failing to disclose the true nature of Petitioner's payment and wrongfully continuing to demand payment.
2. **Failed to honor the negotiable instrument**, violating **UCC § 3-310, 12 C.F.R. § 201.108, and GAAP Rule ASC 405-20-40-1**, which require proper processing of financial instruments.
3. **Did not issue a required IRS Form 1099-C**, which is mandated when a debt is discharged, violating **26 C.F.R. § 1.6050P-1**.
4. **Retained cash collateral, including down payments and monthly payments**, despite knowing that the debt obligation had been settled, leading to unjust enrichment.
5. **Wrongfully imposed a lien on Petitioner's automobile without authorization**, constituting conversion and fraud.
6. **Failed to clear the automobile title despite the satisfaction of the alleged debt obligation**.

These actions represent a **deliberate failure to act in good faith** as fiduciaries, warranting equitable intervention.

B)(1) Count II: Violation of Federal Banking & Financial Disclosure Laws

(2) Supporting Facts:

Respondents engaged in deceptive financial practices that violated multiple federal banking laws, including:

1. **Failure to properly credit Petitioner's Bill of Exchange as lawful payment**, violating **12 C.F.R. § 201.108**, which recognizes negotiable instruments as lawful tender.
2. **Fraudulent omission of material facts regarding the securitization of the auto loan**, violating **12 C.F.R. § 37.3(b)** (misrepresentation of banking transactions).
3. **Failure to report discharge of debt to the IRS**, violating **26 C.F.R. § 1.6050P-1** (IRS reporting requirements for canceled debt).
4. **Willful misrepresentation of financial records**, violating **GAAP Rule ASC 305-10-20**, which mandates proper classification of financial instruments.
5. **Unjust enrichment through securitization**, wherein Respondents sold Petitioner's receivables to investors while continuing to demand payment.

6. **Deceptive trade practices and fraudulent concealment**, constituting violations under the Consumer Financial Protection Bureau (CFPB) 15 U.S.C. § 1692e (False representations in debt collection).

Due to these violations, Petitioner seeks **injunctive relief** to prevent further harm and to compel Respondents to **clear the title, issue a UCC-3 Termination Statement, return surplus cash collateral, and provide full disclosure of all financial transactions involving Petitioner's account.**

C)(1) Count III: Unjust Enrichment & Wrongful Conversion of Property

(2) Supporting Facts:

Respondents have **knowingly and wrongfully profited** from Petitioner's assets by **refusing to acknowledge valid payment and continuing to collect on a debt that has been extinguished.** This constitutes **unjust enrichment, conversion, and financial misconduct** as follows:

1. **Retention of Cash Collateral & Monthly Payments**
 - Petitioner provided a **down payment and monthly installment payments** which were collected under **false pretenses**, despite the debt being discharged.
 - **Respondents failed to refund excess funds or apply them properly** as required under **GAAP Rule ASC 405-20-40-1 (removal of liabilities upon legal release).**
2. **Improper Use of Petitioner's Negotiable Instrument**
 - The negotiable instrument **was accepted and not returned**, thereby legally settling the debt.
 - Respondents **failed to credit the instrument** and instead continued to claim ownership over Petitioner's automobile.
3. **Wrongful Lien Placement on Petitioner's Automobile**
 - Petitioner **never authorized Carvana to place a lien on the automobile.**
 - Despite lack of legal authority, **Respondents have not removed the lien**, even after receiving a valid negotiable instrument as payment.
 - The fraudulent lien must be removed via **UCC-3 Termination Statement**, and title must be cleared immediately.
4. **Securitization & Profiteering Without Disclosure**
 - Respondents **sold Petitioner's receivables to investors while continuing to demand payment**, leading to **double-dipping and unjust enrichment.**
 - A **Constructive Trust must be imposed** over all **pre-funded cash reserve accounts, excess spread revenues, and profits derived from Petitioner's receivables** to ensure proper accounting.
5. **Burden of Proof Falls on Respondents**
 - Respondents must **demonstrate why the negotiable instrument was invalid**, as equity demands that **those who profit from deception must bear the burden of proof.**
 - Failure to provide accounting records constitutes **fraudulent concealment**, a violation of **GAAP Rule ASC 305-10-20 (classification of cash equivalents).**

C)(1) Count III:

(2) Supporting Facts:

D) PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?

Yes ☐ No ☒ If your answer is "YES", describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit.

Plaintiffs:

Defendants:

N/A

b) Name of court and docket number:

N/A

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

d) Issues raised:

N/A

e) Approximate date of filing lawsuit:

N/A

f) Approximate date of disposition:

N/A

- 2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes ☒ No ☐ If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No," briefly explain why administrative relief was not sought.

please See Attachment for
Brief explanation Sought on
Back of page

E. REQUEST FOR RELIEF

- 1) I believe that I am entitled to the following relief:

please See Attachment page included on
Back of page.

Signature of Attorney (if any)

Signature of Petitioner

Ismael Labarrere-Abreu (BENEFICIARY)
(All Rights Reserved)

Attorney's full address and telephone
number.

Administrative Relief Sought

I have previously sought **both informal and formal relief** regarding the acts complained of in Part C. Specifically, I made numerous good-faith attempts to resolve the matter directly with the Respondents prior to seeking judicial intervention.

1. Formal Written Notice & Tender of Payment

- I formally submitted a **Negotiable instrument (promissory note)**, pursuant to **UCC Article 3 and 12 C.F.R. § 201.108**, to properly discharge the alleged debt obligation.
- This tender was sent via **registered mail with proof of delivery**, and Respondents failed to process the instrument in accordance with applicable laws.

2. Demand for Correction & Compliance

- I issued formal notices demanding that **Carvana and or affiliates, officers, directors, and but not limited to executives** update their records to reflect the discharge of the obligation.
- Despite multiple correspondences, they failed to act in good faith, violating **12 C.F.R. § 37.3(b), 15 U.S.C. § 1692e, and other consumer protection laws**.

3. Administrative Complaints with Regulatory Agencies

- I submitted complaints to the **Federal Trade Commission (FTC), Attorney General of NM via the department of Justice** regarding the Respondents' deceptive financial practices, failure to properly account for the discharged debt and or the fraudulent lien placed on the automobile title.
- These agencies acknowledged receipt of my complaints, but Respondents **failed to take corrective action**, necessitating judicial intervention.

4. Failure to Respond & Acquiescence

- Respondents were given multiple opportunities to cure their violations but failed to provide a substantive response, thereby engaging in **acquiescence and default through non-response** under contract law principles.
- Pursuant to the **mailbox rule**, Respondents' failure to return the tendered instrument constitutes legal acceptance, and any continued attempts to collect on the discharged obligation amount to **fraud, unjust enrichment, and deceptive trade practices**.

5. Ongoing Willingness to Resolve in Good Faith

- Despite their failure to act in accordance with federal and commercial banking laws, I remain willing to **resolve this matter in good faith through proper offset**.
- If the Respondents fulfill the duties they were legally obligated to fulfill from the outset, I am prepared to **dismiss this case**, provided that they:

■ **RETURN**

■ **All CASH**

■ **COLLATERAL**

■ **USED AS SECURITY**

■ **including down payment**

■ **and monthly installments**

■ **AND fees charged.**

■ **Fully discharge the debt** using proper accounting procedures.

■ **Remove all liens** from the automobile title and ensure it is **free and clear**, providing the manufacturer certificate of origin (MCO) as well as the title.

■ **Provide copies of the 1099-C** as required by law.

■ **Correct all credit reporting** to reflect **positive payment history** with no derogatory remarks.

This remains an equitable remedy that ensures fairness for all parties involved. However, failure to act in good faith will necessitate continued legal action and escalation through public exposure, regulatory complaints, and financial damages.

Final Statement

I have exhausted all administrative remedies and made every reasonable effort to resolve this dispute outside of litigation. Respondents' continued **refusal to act in good faith** and failure to comply with federal banking laws and UCC provisions have left me no choice but to seek relief from this Honorable Court. However, I remain open to a **lawful and equitable resolution** that ensures the full and proper discharge of the debt obligation.

Request for Relief

I believe I am entitled to the following relief:

1. **Immediate Injunctive Relief**
 - **A temporary restraining order (TRO)** preventing Respondents from engaging in any further collection efforts, repossession attempts, or adverse credit reporting until the outcome of this litigation.
2. **Declaratory Judgment**
 - A ruling that **the alleged debt has been lawfully discharged**, and that Respondents' refusal to process the tendered instrument violates **federal and equitable banking principles**.
3. **Cancellation & Removal of Fraudulent Liens**
 - An **order compelling the immediate release of any security interest** or lien on my automobile, as the alleged debt has already been settled.
 - Issuance of a **UCC-3 termination statement** to clear the vehicle title.
4. **Constructive Trust & Full Accounting of Financial Transactions**
 - The Court should **impose a constructive trust** over any funds derived from securitization, reserve accounts, and excess spread revenues tied to my financial transactions with Respondents.
 - Respondents should be required to **produce a full accounting of all financial gains they obtained from securitizing my note and using my financial instruments**.
5. **Return of Cash Collateral & Refund of Down Payment**
 - Return of the **down payment and all cash collateral** improperly retained by Respondents.
6. **Compensatory & Punitive Damages**
 - Damages for **financial injury, fraud, and unjust enrichment** due to Respondents' failure to comply with federal banking regulations and the unjust harm caused by their unlawful conduct.
7. **Public Notice & Regulatory Review**
 - If Respondents fail to comply, I reserve the right to escalate this matter through **public exposure (YouTube, Instagram, Facebook, and consumer advocacy platforms)** as it is in the public's best interest to be aware and know that CARVANA and its affiliates, officers, directors, executives, and but not limited to agents continuously engage in repetitive unsafe and unsound banking practices and fraudulent and deceitful misrepresentations and that negotiable instruments pursuant to article 3 of the UCC are in fact lawful tender declared by congress backed by "full faith and credit" and the only way to truly extinguish/cancel out debt because federal reserve notes(a debt instrument, IOU) simply move the cash around and does not cancel or extinguish the debt obligation. Also, I reserve the right to further complain with **regulatory and enforcement agencies** such as but not limited to the IRS for tax fraud.

Final Statement

I have exhausted all administrative remedies and made every reasonable effort to resolve this dispute outside of litigation. Respondents' continued **refusal to act in good faith** and failure to comply with federal banking laws and UCC provisions have left me no choice but to seek relief from this Honorable Court.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1746. 18 U.S.C. Sec. 1621.

Executed at 13404 panorama loop NE, Albuquerque, NM 87123 on MARCH 18 2025.
(Location) (Date)

Ismael Labarrere-Abreu (BENEFICIARY)
(Signature) (All RIGHTS Reserved)